

Federal Court



Cour fédérale

Date: 20190228

Docket: IMM-2351-18

Citation: 2019 FC 226

Ottawa, Ontario, February 28, 2019

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

MANAL SERHAN
AYA SERHAL
MOHAMAD SERHAL
AHMAD SERHAL

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. PROCEEDING

[1] This application is for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board, dated May 4, 2018, in which the RPD refused the Applicants' refugee claim [the Decision]. This application was brought pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

II. BACKGROUND

[2] The Applicants are a mother, who is the principal applicant [the PA] and her three adult children. The PA's husband [the Husband] has not come to Canada. They are all citizens of Lebanon.

[3] The Applicants fear persecution in Lebanon from Hezbollah because of their perceived political opinion and their religious affiliation as Sunni Muslims. As well, the PA fears domestic violence at the hands of her Husband.

[4] In her original Basis of Claim [BOC] form, the PA stated that when the family returned to Lebanon from Kuwait in 2015, the Husband opened a shop. Thereafter, he was told by members of Hezbollah that he and the PA were required to pay \$300 a month for protection. The PA stated that her Husband initially paid the fee, but eventually fell behind and owed arrears.

[5] The PA reported in her BOC that there was an incident in which she was slapped by a Shia man for parking her car in a wrong spot [the Parking incident]. She further stated that in August 2016, a group of people came to the shop and attacked them and "crushed goods with a hammer" [the Attack at the Shop]. The PA also stated that in February 2017, she received death threats from a man who had ties to Hezbollah. This occurred when she was on her way to visit her mother-in-law [the Threat]. These events will be collectively referred to as the "Incidents".

[6] When the Applicants first arrived in Canada in October 2017, the PA told the officer at the Port of Entry that her Husband had been kidnapped and that she did not know his whereabouts. In her BOC, she admitted that this was not true. She stated that she lied because

she was worried that all the Applicants would be sent back to Lebanon and, therefore, copied a story told by someone who had made a successful refugee claim. She was also concerned because she did not have her Husband's permission to travel with the youngest child who, at that time, was still a minor.

[7] However, in November 2017, the Husband provided a document in which he consented to the children remaining in Canada with their mother. He also provided a letter dated November 7, 2017 that stated, among other things, that while he had initially objected to his wife leaving Lebanon because he hoped he could resolve his issues with Hezbollah, he was now certain that she had made the right decision because the conditions for Sunni Muslims were deteriorating [the Husband's Letter].

[8] The RPD heard the claim over two days on December 19, 2017 and April 6, 2018. Between the hearings, the PA filed an amendment to her BOC, claiming for the first time that she feared domestic violence from her Husband. She stated that he began to abuse her on the day of their marriage celebration in 1996 and that she became depressed and tried to commit suicide in 2001 and 2008. The Applicant said that she feared that her Husband would punish her for leaving Lebanon without his consent. She stated that he was furious because she had given her power of attorney over her affairs in Lebanon to a friend, rather than to him.

III. THE RPD'S DECISION

[9] The RPD found that the PA was not a reliable witness. As described above, she alleged that Hezbollah and other criminals had attacked and threatened members of the family on three occasions. The RPD found that when she was asked to describe the Incidents, her descriptions were "convoluted, inconsistent and contradictory." I will deal with each incident in turn.

A. *The Three Incidents*

(1) The Parking Incident

[10] The RPD ultimately concluded that this event did not occur because it found that there were three different accounts of the incident. In her oral testimony, the PA stated that during this incident, a group of people assaulted her because she parked her car in the wrong location. The police were nearby and intervened. She stated that the police told her that the men were of the Shia faith. There was one Syrian man in the group who was taken into custody and the rest, who were Lebanese, fled.

[11] However, in her BOC, the PA indicated that she was slapped by a Shia man who was harassing her when she parked her car. She did not mention that a group of men initially attacked her.

[12] The Husband's Letter simply indicates that an incident occurred in which the PA was attacked. However, he says that the police did nothing to assist her. The RPD found that this contradicted the PA's oral testimony which included a description of police assistance.

(2) The Attack at the Shop

[13] The RPD also concluded that this incident did not occur. The RPD noted that in her BOC, the PA stated that a group of people came to their shop and that the police did nothing to help.

[14] The RPD noted that in oral testimony, the PA stated that it was a Christian family who attacked the shop and that the police spent a "full day" interrogating the attackers and conveyed the information they uncovered to the PA's family.

[15] In addition, the RPD found inconsistencies between the PA's oral evidence about a Christian family and the documentary evidence. The Applicants provided a letter from a lawyer in Lebanon [the Lawyer's letter], which was based on information from the Husband. It indicates that there was one attacker whom the lawyer identified by name. However, the Husband's Letter states that the attack at the shop involved "unknown people." The RPD found that these documents contradicted the PA's oral testimony that it was a Christian family who attacked them. The RPD concluded that the Lawyer's Letter and the Husband's Letter were not reliable and gave them no weight insofar as they purported to corroborate the attack at the shop.

(3) The Threat

[16] The Principal Applicant alleged in her BOC that a member of Hezbollah threatened her with death when she was on her way to visit her mother-in-law. In her oral testimony, she added that he would appear every time she went to visit and that he laughed at her in a sarcastic manner. However, the RPD noted that in her BOC, the PA did not mention that she encountered this man more than once. Because of this omission, the RPD made a negative credibility finding.

[17] Given these problems with the evidence, the RPD concluded that, on a balance of probabilities, neither Hezbollah nor any criminals had ever attacked or threatened the PA or her Husband. Further, it concluded that the PA would not face a serious possibility of persecution.

B. *The Domestic Violence Claim*

[18] The RPD considered letters from the PA's sister in Canada [the Sister], her brother, her husband's cousin, the PA's friend and her father in Lebanon. They all indicated that the PA had been unhappy and mistreated during her marriage.

[19] The Sister was scheduled to testify at the hearing on April 6, 2018. However, she did not appear. Instead, the PA filed an affidavit sworn by the Sister on April 5, 2018. The PA also advised the RPD that her Sister's son was ill, but there was nothing in the Sister's affidavit to explain her absence. The RPD therefore drew a negative inference from the sister's absence.

[20] The RPD concluded that the letters from the PA's family members and friend were insufficient to overcome the existing credibility concerns.

[21] The RPD also considered a copy of an insulting and threatening text message exchange that allegedly took place between the PA and her husband on November 17 and transcriptions of threatening voicemails from the Husband received on January 20. The RPD noted that on close examination, there were no years included in the dates on the original text and voicemail messages. The years only appeared as 2017 and 2018 on the translated copies. Further, the RPD noted that the translation shows that the text message was written "sarcastically". The RPD questioned how the translator was able to account for the tone of a text message or knew the years in which the texts were sent. The RPD found that these matters affected the overall reliability of the documents. It therefore gave them little weight.

[22] Further, the RPD took into account its earlier conclusion that the Husband had provided unreliable evidence in the Husband's Letter. It also noted that the first text message exchange allegedly took place on November 17, 2017, ten days after the Husband filed his letter of support for the PA's trip to Canada and one day after he filed the parental consent letter. Given the fact that these letters and the threatening messages were inconsistent and close in time, the RPD found that the existence of the messages did not outweigh the credibility concerns with the claim.

[23] The RPD therefore concluded that the Principal Applicant had not met her onus to prove on a balance of probabilities that she faces a serious possibility of domestic violence if she were to return to Lebanon.

IV. DISCUSSION

[24] The PA submits that the RPD's negative credibility findings were microscopic and not concerned with material issues. She also says that those findings should not impact the claim based on domestic violence because it is a separate claim with its own supporting evidence.

[25] The PA takes issue with the RPD's treatment of the Sister's affidavit saying that it should have given the PA notice that it was going to draw a negative inference from the Sister's failure to appear. The PA also says that fairness required the RPD to alert the Applicants to the problems it found with the text and voicemail messages. As well, the PA is critical of the RPD's failure to mention a psychotherapist's report.

[26] The PA's submission about the tangential nature of the credibility findings is not persuasive. Matters such as the number of incidents and the number and identity of the assailants and the existence of a police response are material.

[27] Credibility is always an issue and during the first hearing, the PA's credibility in connection with the Incidents was brought into serious question. Against that background, the Sister's *viva voce* evidence was important to the domestic violence claim because it would have given the RPD the opportunity to assess a witness other than the PA. When this opportunity was eliminated by the Sister's failure to appear, and no offer was made to have her testify by teleconference, the RPD was entitled to question whether her evidence would have been truthful.

The RPD did signal its concern to counsel for the Applicants. Before she began her final submissions, she asked whether the RPD had credibility concerns about the domestic violence claim and was told that credibility was still an issue.

[28] It is also significant that the RPD had already concluded that another family member – the Husband – was untruthful. In these circumstances, and given the problems with the text and voicemail messages, it is my conclusion that the RPD reasonably rejected the balance of the correspondence and concluded that domestic violence had not been demonstrated. I should add that the RPD had no obligation to alert the Applicants about the concerns it had about the voicemail and text messages.

[29] After the first hearing when the PA was confronted with inconsistencies between her BOC and her oral testimony, she attended for an examination by a psychotherapist. The resulting report by Ms. Riback is dated March 12, 2018 [The Report]. It was not mentioned in the RPD's Decision.

[30] The Report shows that the PA described the Incidents and Ms. Riback's conclusions were based on her account. The PA also described the abuse she allegedly suffered during her marriage. Ms. Riback concluded that as a result of these traumatic experiences, the PA might be unable to provide clear testimony and could experience impaired memory. It is noteworthy that while the PA reported short term memory loss, there is no indication in the Report that the PA suffered long term memory loss. She apparently had no difficulty recalling and relating her history during the assessment.

[31] In my view, it was reasonable of the RPD to leave this Report out of the Decision because it was based entirely on the PA's account of events which the RPD had concluded was not credible. As well, the PA's short term memory was not at issue at the hearing.

[32] For all these reasons, the application for judicial review will be dismissed.

[33] No question was posed for certification for appeal.

JUDGMENT in IMM-2351-18

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to reflect the Minister of Citizenship and Immigration as the correct Respondent; and
2. The application for judicial review is hereby dismissed.

“Sandra J. Simpson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2351-18

STYLE OF CAUSE: MANAL SERHAN, AYA SERHAL, MOHAMAD SERHAL, AHMAD SERHAL v MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 13, 2019

JUDGMENT AND REASONS: SIMPSON J.

DATED: FEBRUARY 28, 2019

APPEARANCES:

Feruzza Djamalova FOR THE APPLICANTS

Alex C. Kam FOR THE RESPONDENT

SOLICITORS OF RECORD:

Sobirovs LLP FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario